

Internal Revenue Service

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Department of the Treasury

Washington, DC 20224

Third Party Communication: None

Date of Communication: Not Applicable

Person To Contact:

, ID No.

Telephone Number:

Refer Reply To:

CC:PSI:B02

PLR-144679-12

Date:

December 03, 2012

X:

Date 1:

Date 2:

Date 3:

Date 4:

Date 5:

State:

A:

Dear _____ :

This letter responds to your letter dated October 5, 2012, and subsequent correspondence, requesting relief under § 1362 of the Internal Revenue Code.

The information submitted states that X was formed in State on Date 1 and that it elected to be treated as an S corporation effective Date 2. On Date 3, X's S election terminated upon the transfer of shares in X to an ineligible shareholder. Effective Date 4, there is a majority shareholder, A, who was not a shareholder of X on Date 3. Also effective Date 4, there are no ineligible shareholders of X. X requests permission to be an S corporation, effective Date 5. Date 5 is prior to the expiration of the five-year waiting period imposed by § 1362(g), but the due date for a timely S election effective Date 5 has passed.

Section 1362(a) provides that except as provided in § 1362(g), a small business corporation may elect to be an S corporation.

Section 1362(d)(2)(A) provides that an election under § 1362(a) shall be terminated whenever (at any time on or after the 1st day of the 1st taxable year for which the corporation is an S corporation) such corporation ceases to be a small business corporation.

Section 1362(g) provides that if a small business corporation has made an election under § 1362(a) and if such election has been terminated under § 1362(d), the corporation (and any successor corporation) shall not be eligible to make an election under § 1362(a) for any taxable year before its fifth taxable year which begins after the first taxable year for which the termination is effective, unless the Secretary consents to the election.

Section 1.1362-5(a) of the Income Tax Regulations provides that absent the Commissioner's consent, an S corporation whose election has terminated (or a successor corporation) may not make a new election for five taxable years as described in § 1362(g). The Commissioner, however, may permit the corporation to make a new election before the 5-year period expires. The corporation has the burden of establishing that under the relevant facts and circumstances, the Commissioner should consent to a new election. The fact that more than 50 percent of the stock in the corporation is owned by persons who did not own any stock in the corporation on the date of the termination tends to establish that consent should be granted.

Section 1362(b)(5) provides that if – (A) an election under § 1362(a) is made for any taxable year after the date prescribed by § 1362(b) for making such election for such taxable year or no such election is made for any taxable year, and (B) the Secretary determines that there was reasonable cause for the failure to timely make such election, the Secretary may treat such an election as timely made for such taxable year.

Based solely on the facts submitted and representations made, we conclude that X has met its burden under § 1.1362-5(a). We grant permission for X to re-elect to be an S corporation effective Date 5. In addition, we conclude that X has established reasonable cause for failing to make a timely election to be an S corporation effective Date 5. Accordingly, provided that X makes an election to be an S corporation by filing a completed Form 2553 with the appropriate service center effective Date 5 within 120 days following the date of this letter, then such election will be treated as timely made for X's taxable year beginning Date 5. A copy of this letter should be attached to the Form 2553.

Except as expressly provided herein, no opinion is expressed or implied concerning the tax consequences of any aspect of any transaction or item discussed or referenced in this letter. Specifically, no opinion is expressed regarding whether X is otherwise eligible to be an S corporation.

This ruling is directed only to the taxpayer that requested it. Section 6110(k)(3) of provides that it may not be used or cited as precedent.

Pursuant to a power of attorney on file with this office, a copy of this letter is being sent to your authorized representative.

Sincerely,

Bradford R. Poston
Senior Counsel, Branch 2
Office of the Associate Chief Counsel
(Passthroughs and Special Industries)

Enclosures (2)
Copy of this letter
Copy for § 6110 purposes

cc: